

HOUSE BILL 4170

By Rowland

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15, Part 2; Title 63, Chapter 6 and Title 63, Chapter 9.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-15-201, is amended by deleting the section in its entirety and substituting instead the following language:

(a) For the purpose of this section:

(1) "Abortion" means the administration to any woman pregnant with child, whether the child be quick or not, of any medicine, drug, or substance whatever, or the use or employment of any instrument, or other means whatever, with the intent to destroy the child, thereby destroying the child before the child's birth; and

(2) "Attempt to procure a miscarriage" means the administration of any substance with the intention to procure the miscarriage of a woman or the use or employment of any instrument or other means with such intent.

(b)

(1) Every person who performs an abortion commits the crime of criminal abortion, unless such abortion is performed in compliance with the requirements of subsection (c). Criminal abortion is a Class C felony.

(2) Every person who attempts to procure a miscarriage commits the crime of attempt to procure criminal miscarriage, unless the attempt to procure a miscarriage is performed in compliance with the requirements of subsection (c). Attempt to procure a criminal miscarriage is a Class E felony.

(3) Every person who compels, coerces, or exercises duress in any form with regard to any other person in order to obtain or procure an abortion on any female commits a misdemeanor. A violation of this section is a Class A misdemeanor.

(c) No person is guilty of a criminal abortion or an attempt to procure criminal miscarriage when an abortion or an attempt to procure a miscarriage is performed under the following circumstances:

(1) During the first three (3) months of pregnancy, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and pursuant to the medical judgment of the pregnant woman's attending physician who is licensed or certified under title 63, chapter 6 or 9;

(2) After three (3) months, but before viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and in a hospital as defined in § 68-11-201, licensed by the state department of health, or a hospital operated by the state of Tennessee or a branch of the federal government, by the pregnant woman's attending physician, who is licensed or certified under title 63, chapter 6 or 9, pursuant to the attending physician's medical judgment; or

(3) During viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and by the pregnant woman's attending physician, who is licensed or certified under title 63, chapter 6 or 9; and, if all the circumstances and provisions required for a lawful abortion or lawful attempt to procure a miscarriage during the period set out in subdivision (c)(2) are adhered to; and if, prior to the abortion or attempt to procure a miscarriage the physician has certified in writing to the hospital in

which the abortion or attempt to procure a miscarriage is to be performed, that in the physician's best medical judgment, after proper examination, review of history, and such consultation as may be required by either the rules and regulations of the board for licensing health care facilities promulgated pursuant to § 68-11-209, or the administration of the hospital involved, or both, the abortion or attempt to procure a miscarriage is necessary to preserve the life or health of the mother, and shall have filed a copy of the certificate with the district attorney general of the judicial district in which the abortion or attempt to procure a miscarriage is to be performed.

(d) No abortion shall be performed on any pregnant woman unless the woman first produces evidence satisfactory to the physician performing the abortion that she is a bona fide resident of Tennessee. Evidence to support the claim of residence shall be noted in the records kept by the physician and, if the abortion is performed in a hospital, in the records kept by the hospital. A violation of this subsection (d) is punished as provided by subdivision (b)(1).

SECTION 2. Tennessee Code Annotated, Section 39-15-202, is amended by deleting the section in its entirety and substituting instead the following:

(a) An abortion otherwise permitted by law shall be performed or induced only with the informed written consent of the pregnant woman, given freely and without coercion. Such consent shall be treated as confidential.

(b) In order to ensure that a consent for an abortion is truly informed consent, an abortion shall be performed or induced upon a pregnant woman only after she has been orally informed by her attending physician of the following facts and has signed a consent form acknowledging that she has been informed as follows:

(1) That according to the best judgment of her attending physician she is pregnant;

(2) The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or after a history, physical examination, and appropriate laboratory tests;

(3) That if more than twenty-four (24) weeks have elapsed from the time of conception, her child may be viable, that is, capable of surviving outside of the womb, and that if the child is prematurely born alive in the course of an abortion her attending physician has a legal obligation to take steps to preserve the life and health of the child;

(4) That abortion in a considerable number of cases constitutes a major surgical procedure;

(5) That numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that her physician will provide her with a list of the agencies and the services available if she so requests; or

(6) Numerous benefits and risks are attendant either to continued pregnancy and childbirth or to abortion depending upon the circumstances in which the patient might find herself. The physician shall explain these benefits and risks to the best of the physician's ability and knowledge of the circumstances involved.

(c) At the same time the attending physician provides the information required by subsection (b), the physician shall inform the pregnant woman of the particular risks

associated with her pregnancy and childbirth and the abortion or child delivery technique to be employed, including providing her with at least a general description of the medical instructions to be followed subsequent to the abortion or childbirth in order to ensure her safe recovery.

(d)

(1) There shall be a two-day waiting period after the physician provides the required information, excluding the day on which the information was given. On the third day following the day the information was given, the patient may return to the physician and sign a consent form.

(2) A violation of this subsection (d) by a physician is a Class E felony.

(3) This subsection (d) shall not apply when the attending physician, utilizing experience, judgment or professional competence, determines that a two-day waiting period or any waiting period would endanger the life of the pregnant woman. The determination made by the attending physician shall be in writing and shall state the physician's medical reasons upon which the physician bases the opinion that the waiting period would endanger the life of the pregnant woman. This provision shall not relieve the attending physician of the duty to the pregnant woman to inform her of the facts under subsection (b).

(e) The attending physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her.

(f) "The physician" or "the attending physician," as used in this section, means any licensed physician on the service treating the pregnant woman.

(g) The provisions of this section shall not apply in those situations where an abortion is certified by a licensed physician as necessary to preserve the life of the pregnant woman.

SECTION 3. This act shall take effect July 1, 2008, the public welfare requiring it.